Nebraska Department of REVENUE

Food, Food Ingredients, and Prepared Food

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Today's Agenda

1.

Overview of Sales and Use Tax

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1. Sales and Use Tax

- What is a **sales transaction**?
  - Sales tax is calculated on the **gross receipts**.
  - **Delivery location** determines the rate of local tax.
  - Retailers must **collect and report sales tax, or document** why they didn't.

1. What Is Use Tax?

- Use tax is due when Nebraska sales tax has not been paid on a taxable item or service purchased for use in Nebraska.
- Sales and use tax are **not BOTH due** on the same transaction.
- The big difference is **who** remits the tax -
  - **Sales tax** is collected and remitted by the **seller**.
  - **Use tax** is paid directly to the Department by the **purchaser/consumer**.

1. Use Tax (continued)

Use tax and sales tax have these things in common -

- They are imposed on the same transactions.
- They have the same exemptions.
- They are calculated at the same rate
  - Where delivery occurs
    OR
  - Where first usage in Nebraska takes place.

1. Use Tax (continued)

- Often due when purchases are made from an **out-of-state seller**
  - Internet, catalog, mail order
  - Magazines and journals by subscription
- Due when the business withdraws **tax-free inventory** for business or personal use (including donations)
  - Auto mechanic
  - Hair salon

2.

2A. Food & Food Ingredients
2B. Prepared Foods

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2. Food, Food Ingredients, and Prepared Foods

The sales tax laws address two types of food items:

- **Food & Food Ingredients** (BLUE = Nontaxable); and
- **Prepared Foods** (MAROON = Taxable).

2a. Food & Food Ingredients

- **Food** and **food ingredients (nontaxable)** are:
  - Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated **(any) form**;
  - **Ingested or chewed** by humans; and
  - Consumed for their **taste or nutritional value**.

➢ Examples include, but are not limited to:

Bottled water	**Eggs**	**Meats**	**Sugar**
Candy	**Flour**	**Milk**	**Vegetables**
Cereals	**Fruit**	**Soft drinks**	
Chewing gum	**Ice**		

For more information, see Reg-1-087.01A – Food and Food Ingredients.

2a. Food & Food Ingredients (continued)

- **Meal Substitutes** are considered food and are **nontaxable**.
  - **Nutrition Facts** are listed on the label.

Nutrition Facts
Serving Size 1 piece (219g)
Servings Per Container 6

Amount Per Serving
Calories 520 — Calories from Fat 240

	% Daily Value*
Total Fat 27g	41%
Saturated Fat 12g	61%
Cholesterol 255mg	86%
Sodium 1110mg	46%
Total Carbohydrate 29g	10%
Dietary Fiber 1g	6%
Sugars 1g	
Protein 39g	
Vitamin A 20% •	Vitamin C 4%
Calcium 15% •	Iron 25%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

2a. Food & Food Ingredients (continued)

- **Food** and **food ingredients <u>do not include</u> alcoholic beverages**, **dietary supplements**, or **tobacco**.
  - A dietary supplement is any product required to be labeled as a **dietary supplement**.
  - A dietary supplement will have a **supplemental facts box** on the label.
    - **Certain Energy Drinks**
    - **Dietary Substances**
    - **Herbs**
    - **Minerals**
    - **Vitamins**

Supplement Facts
Serving Size: Two Tablets

	Amount per Serving	% Daily Value
Vitamin A (as Beta Carotene)	25,000 IU	500
Vitamin C (as Ascorbic Acid)	1,000 mg	1670
Vitamin E (as Tocopheryl Succinate)	400 IU	1330
Zinc (as Zinc Gluconate)	50 mg	333
Copper (as Copper Gluconate)	2 mg	100
Selenium (as Selenomethionine)	50 mcg	71
Chromium (as Chromium Picolinate)	200 mcg	166
Citrus Bioflavonoid Complex	250 mg	*
Eyebright (Euphrasia officinalis)	50 mg	*
Alpha-Lipoic Acid	50 mg	*
Ginkgo Biloba	25 mg	*
L-Glutathione	10 mg	*
FloroGLO® Lutein (containing Zeaxanthin)	6 mg	*

*Daily Value not established

For more information, see Reg-1-087.01B – Food and Food Ingredients.

2b. Prepared Food (continued)

- If a food meets **any** of the following, it is **prepared food** and is **taxable:**
  - **Two or more food ingredients** mixed or combined (for example, meals, sandwiches, fountain drinks);
  - Food sold in **heated** state (for example, soups, hamburgers, coffee); or
  - Food **sold with eating utensils (75% rule applies)** (for example, plates, bowls, napkins, forks, straws).

More on the 75% rule later….

For more information, see Reg-1-087.03B – Prepared Foods.

2b. Prepared Food

- **Prepared foods, coin-operated vending machine sales, concessionaire sales,** and **sales by caterers (all taxable)** involve food that is:
  - Intended for **immediate consumption**; and
  - **Ready to be eaten** without further preparation.

➢ <u>Examples</u> include, but are not limited to:

Coffee/Fountain Drinks	**Meals**
Fried or Rotisserie Chicken	**Sandwiches**
Ice Cream Cones	**Slice of pizza**

For more information, see Reg-1-087.03B – Prepared Foods.

2b. Prepared Food (continued)

- **Prepared food <u>does not include</u>:**
  1. Bakery items sold in an **<u>unheated state</u>** or **<u>without eating utensils</u> (nontaxable)**.
     - <u>Examples</u> include, but are not limited to:

       Bagels **Cookies** **Donuts**
       Bread **Cakes** **Tortillas**

  2. Food sold by **<u>weight</u>** or **<u>volume</u> (nontaxable)**.
     - <u>Examples</u> include, but are not limited to containers **priced per pound (not per serving)** of:

       Chicken(unheated) **Fruit Salad** **Popcorn**
       Coleslaw **Ice Cream** **Potato Salad**

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2b. Prepared Food (continued)

- **Prepared food does not include:**
  3. Food that is only **<u>cut, repackaged, or pasteurized</u>** by the seller **(nontaxable)**.
     - <u>Examples</u> include, but are not limited to:

       Luncheon Meats **Cheeses**
       Cheese Trays **Fruit Trays**

  4. **Eggs**, **fish**, **meat**, **poultry**, and foods containing these raw animal foods, that **<u>require cooking</u>** by the consumer **(nontaxable)**.

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3.
The 75% Rule

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3. The 75% Rule

Back on Slide 14, we listed things that make food **taxable**.
Now let's talk about "**eating utensils**."

- If **total sales** of **prepared foods** are **<u>more than 75%</u>** of total food sales…
- …then, **eating utensils** need only be **made available** to the purchaser to make the food **taxable**.

OR

- If **total sales** of **prepared foods** are **<u>75% or less</u>** of total food sales…
- …then, **eating utensils** need to be **given** to the purchaser to make the food **taxable**.

For more information, see Reg-1-087.02-03 – Prepared Foods.

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3. The 75% Rule (continued)

Here's how to calculate it.

Numerator = Total sales of **prepared food** (**Two or more food ingredients** mixed or food sold in **heated state**)

Denominator = Total sales of **food, food ingredients**, **candy**, **soft drinks**, **prepared food**, and **dietary supplements**

NOTES:

- *Do not include sales of alcoholic beverages, tobacco, motor vehicle fuels, and any other non-food sales;*
- *Calculate the percentage based on retailer's most recently completed tax year; **and***
- *Calculate the % based on totals for ALL locations in Nebraska.*

3. The 75% Rule (continued)

Establishing an annual percentage.

- ABC Pizza's annual sales were $200,000.
- Sales of **prepared food items** were **$168,000**.

➢ **Example 1** – Here's the calculation:

$\frac{168,000}{200,000}$ = 84% of sales are **prepared food**.

*84% > 75%, so **eating utensils** only need to be **available** to make a transaction **taxable**.*

3. The 75% Rule (continued)

*If **more than 75%** of sales by the restaurant are **prepared food**, and **eating utensils are available** to the customer, then all food items are **taxable**.*

➢ **Example 2 -** ABC Pizza sells:

- a prepared meal; and
- a bottle of water.

Prepared meal	**$ 18.50**	**(T)** Taxable
Bottle of water	**+1.50**	**(T)**
Subtotal **(all taxable)**	20.00	
Tax (7% x **$20**)	+ 1.40	
Total	**$ 21.40**	

3. The 75% Rule (continued)

*If a convenience store has **75% or less** of sales of **prepared food**, it **must give an eating utensil** to the customer to make a food item **taxable**.*

➢ **Example 3** – XYZ, a convenience store, sells:

- a slice of prepared pizza on a plate; and
- a bottle of water.

Prepared pizza on a plate	**$ 5.50**	**(T)**
Bottle of water	**+1.50**	**(E)** Exempt
Subtotal	7.00	
Tax (7% x **$5.50**)	+ .39	
Total	**$ 7.39**	

3. The 75% Rule (continued)

*If **less than 75%** of sales are **prepared food**, and **eating utensils are not given** to the customer, then food items not generally considered prepared food are **sales tax exempt**.*

- **Example 4** - XYZ convenience store sells:
  - a candy bar; and
  - a bottled water.

Candy bar	**$ 1.50**	**(E)**
Bottled water	**+1.50**	**(E)**
Total	**$ 3.00**	

3. The 75% Rule (continued)

There is an

EXCEPTION TO THE 75% RULE.

IF… *a food item has:*

- ***4 or more servings packaged as one item*** *(for example, an ice cream cake); and*
- ***serving sizes based on the Nutrition Facts label,***

…THEN,

- *the food item is considered a **grocery item**, and is*
- ***nontaxable**.*

3. The 75% Rule (continued)

EXCEPTION TO THE 75% RULE

- **Example 5 –** Bob's Restaurant (whose sales of prepared food are more than 75%) sells:
  - a prepared meal,
  - a bottle of water, and
  - an ice cream cake (to go).

Prepared meal	**$ 18.50**	**(T)**
Bottled water	**+ 1.50**	**(T)**
Ice cream cake (to go)	**+ 9.00**	**(E)**
Subtotal	**29.00**	
Tax (7% x **$20**)	+ 1.40	
Total	**$ 30.40**	

4.

Additional Information on Prepared Meals

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4. Additional Info on Prepared Meals

A. These **prepared meals** are generally **taxable** to the purchaser:
- **Awards banquets**
- **Charity benefits**
- **Employee meals**
- **Suggested donations**

B. **Prepared meals** are generally **nontaxable** when provided to:
- **School & university students**
- **Students living in dorms**
- **Residents of retirement and assisted living facilities**
- **Senior centers (accepting SNAP coupons)**

For more information, see Reg-1-087 – Food For Human Consumption.

4. More Info on Prepared Meals (continued)

C. **Prepared meals** served by a **religious organization** are **nontaxable**, but:
- The meal must be sold at a function that only members of the organization can attend; and
- The religious organization is allowed only one tax exempt event that is open to the general public annually.

For more information, See Reg-1-083 – Food Service, and Reg-1-087.05A – Prepared Foods.

5. Catering

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5. Catering

- All charges for **catering prepared foods** are **taxable.**
  - Examples of items that may be included on the bill, but are not limited to:
    - **Bakery items**
    - **Bar (beverages)**
    - **Chairs and tables**
    - **Food (hot or cold)**
    - **Service charges (mandatory tips)**
    - **Wages**

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Coin-Operated Machines

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6. Coin-Operated Machines

- **Vending machine** sales are **taxable**.
  - All **items sold** from the machine, including **food and beverages**, are **taxable**.
  - Sales tax is included in the price.
  - Owner needs only one sales tax permit for all machines, even though they may be at different locations.

For more information, see Reg-1-031– Coin-Operated Machines.

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Farmer's Markets

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7. Farmer's Markets

- The sale of these items are **taxable**.
  - Examples include, but are not limited to:
    Concessions
    Crafts & clothing
- The sale of **food & food ingredients** are **nontaxable**.
  - Examples include, but are not limited to:

Fruits	**Vegetables**	**Whole pies**
Jelly & jams	**Loaves of bread**	**Spices**

For more information, see Reg-1-041 – Concessionaire Sales.

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Discounts

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8. Discounts

Discount Coupons

- Deal of the day
  - **Sales tax is applied to the item/service when it is redeemed.**
- Group discounts
  - **It depends on manufacturer or retailer.**
- Manufacturer
  - **The amount is discounted after the sales tax is calculated.**
- Retailer
  - **The amount is discounted before the sales tax is calculated.**

Certificates

- Gift certificates
  - **Sales tax is applied to the item/service when it is redeemed.**

For more information, see Reg-1-037 - Trading Stamps and Coupon Redemption.

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9.
Gift Baskets

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9. Gift Baskets

- If the fair market value (FMV) of **food or food ingredients** in the basket is greater than the FMV of the taxable items, the gift basket is **nontaxable**.
- If the FMV of the **taxable items** is greater, the FMV of the gift basket is **taxable**.

Basket (itself)	**$ 4.00**	**(T)**
Cheese	**+ 2.35**	**(E)**
Crackers	**+ 2.50**	**(E)**
Wine	**+14.50**	**(T)**
Subtotal	**23.35**	
Tax (7% x $23.35)	+ 1.63	
Total	**$ 24.98**	

Since the total of the **taxable items** (**$18.50**) is higher than those that are **nontaxable** (**$4.85**), the whole basket is subject to sales tax when it is sold to the customer.

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10.
Purchases

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10. Purchases

A. Items that will be resold are **nontaxable**.

- Issue a **Nebraska Form 13, Section A**, Nebraska Resale Certificate.
  - Examples include, but are not limited to:
    Alcoholic beverages
    Single-use disposable items include:
    - **Disposable cups (foam, cardboard)**
    - **Nonreturnable containers (sacks, boxes)**
    - **Paper plates and napkins**
    - **Plastic eating utensils**

10. Purchases (continued)

B. Containers are either **returnable** or **nonreturnable**.

- **Returnable containers** are **taxable** when sold to the person who will place the contents into them.
- **Nonreturnable containers** are **nontaxable** when sold to the person who will fill the container **and** sell the contents with the container.

For more information, see Reg-1-043 – Containers.

11.
Gross Receipts –
11A. Delivery Charges
11B. Occupation Tax
11C. Tips & Gratuities

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11A. Gross Receipts – Delivery Charges

Delivery charges are **taxable** when:

1. The buyer pays the seller for the delivery charge;

AND

2. The **transaction is taxable**.

Delivery charges are taxable regardless of the method of delivery.

11A. Gross Receipts - Delivery Charges

(continued)

If you owe use tax on a purchase, you also owe **use tax on any delivery charge paid to the seller** as part of that purchase.

11B. Gross Receipts - Occupation Tax

Any city may collect an occupation, privilege, or license tax, on a business within its boundaries.

- The occupation tax rate is set by the city.
- The occupation tax is imposed on the business, similar to income taxes and property taxes.
- The business pays the occupation tax directly to the city on forms provided by the city.
  - Many cities allow sellers to itemize the occupation tax on their customer's bill or invoice as a separate line item.

11B. Gross Receipts – Occupation Tax

(continued)

- The occupation tax is part of the seller's gross receipts.
- If it is separately stated on the invoice, the occupation tax must be added to the sales price **before** calculating state and local sales tax *(see the following example)*.

11B. Gross Receipts – Occupation Tax

(continued)

Example – Meal-only Restaurant Bill

Meal (in Omaha, NE)	$50.00	
Occupation Tax (2.5%)	+ 1.25	>> Remit to the city
Subtotal (gross receipts)	$51.25	
Sales Tax 7% (state 5.5% and city 1.5%)	+ 3.59	>> Remit to the NE Dept of Revenue
Total	**$54.84**	

11C. Gross Receipts – Tips & Gratuities

- **Mandatory (taxable)**
- **Discretionary (nontaxable)**

12.
Other Information

12A. Governmental Entities
12B. Records
12C. Certificate of Clearance

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12A. Governmental Entities

- Sales of prepared food are generally **nontaxable** when billed directly to and paid for by the:
  - **US Government**
  - **State of Nebraska**
  - **Nebraska counties**
  - **Nebraska cities & villages**
- **Taxable** sales to governmental entities include:
  - sales of **prepared food paid for by an employee**, even if the employee will be reimbursed.

For more information, see Reg-1-093 - Governmental Units.

12B. Records

- Every seller is required to keep records.
  - Documents
  - List of items consumed in the business
  - Normal books of account
  - Receipts showing taxes paid
  - Resale and exempt sale certificates
  - Schedules
  - Working papers used in preparing tax returns

We recommend you retain records for 5 years after a return is filed.

12C. Certificate of Clearance

Purchasing A Business = Buying A Liability?

The **buyer** can be held liable for taxes due by the previous owner up to the amount of the purchase price, even if a lien has not been recorded.

PROTECT YOURSELF!

Certificate of Clearance:

- Seller gives the certificate to the buyer; or
- Buyer requests and receives the certificate in writing.
- Buyer must include a copy of the signed purchase agreement.

The Department will:

- Respond within 60 days to a written request, whether buyer needs to withhold funds from the purchase amount or not.

Refer to Successor in Interest, § 77-2707 Sales and Use Tax, and Transferee, § 77-27,110 Income Tax Withholding.

Summary

Nebraska Department of REVENUE

Let us know what you think.
Please turn in your evaluation!

THANK YOU!

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